

1 JOHN S. LEONARDO
United States Attorney
2 District of Arizona
KATHRYN C. FURTADO
3 Assistant U.S. Attorney
Arizona State Bar # 025994
4 United States Courthouse
405 W. Congress Street, Suite 4800
5 Tucson, Arizona 85701
Telephone: 520-620-7300
6 Email: kathryn.furtado@usdoj.gov
Attorneys for Plaintiff

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 United States America,
11 Plaintiff,
12 vs.
13 Ramon Ramos-Zepeda,
14 Defendant.
15

CR 15-00976-TUC-CKJ(BGM)

GOVERNMENT'S MOTION IN LIMINE
TO PRECLUDE DEPORTATION
CHALLENGE AT TRIAL

16 Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States,
17 by and through John S. Leonardo, United States Attorney for the District of Arizona, and
18 Kathryn C. Furtado, Assistant United States Attorney, hereby files this Motion in Limine
19 to preclude the defendant from collaterally attacking the validity of his deportation and
20 removal proceedings at trial.

21 **LAW**

22 The defendant is charged by Indictment with Illegal Re-Entry After Deportation
23 pursuant to 8 U.S.C. 1326. To convict the defendant of this crime, the United States must
24 prove the following elements beyond a reasonable doubt: (1) defendant is an alien, (2)
25 defendant was deported from the United States, and (3) defendant reentered the United
26 States without the consent of the Immigration and Naturalization Service. 9th Cir. Crim.
27 Jury Instr. 9.5 Model (2000).
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1 As proof of the defendant's guilt, the United States expects that its case-in-chief
2 will primarily consist of the presentation of documents relating to the defendant's
3 immigration history. This motion is brought for two reasons: (1) to identify potential
4 extraneous and irrelevant issues that may serve to confuse the jury and unnecessarily
5 prolong the trial of this matter, and (2) to conserve the resources of the Court and jury by
6 resolving legal issues surrounding the admissibility of the government's documents prior
7 to trial.

8 The determination of whether a prior deportation is defective should be made by
9 the district court in a pre-trial proceeding. *United States v. Alvarado Delgado*, 98 F.3d
10 492, 493 (9th Cir.) (en banc), cert. denied, 117 S. Ct. 1096 (1996) (holding government is
11 not required to prove lawfulness of deportation as element of Section 1326 prosecution).
12 In order to challenge the validity of a prior deportation in a 1326 criminal proceeding, an
13 alien must first demonstrate that: (1) he has exhausted his administrative remedies; (2)
14 the judicial proceedings at issue improperly deprived him of the opportunity for judicial
15 review; and (3) the entry of his deportation order was fundamentally unfair. 8 U.S.C. §
16 1326(d).

17 The defendant has challenged the lawfulness of his prior 2009 deportation. An
18 evidentiary hearing has been set for February 17, 2016. This Court has set a motions
19 deadline for February 11, 2016. If the Court denies the defendant's motion to dismiss the
20 indictment based on his challenge to the underlying 2009 deportation, the government
21 respectfully moves this Court to prohibit the defendant from challenging the validity of
22 his deportation proceedings during trial.

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1 **CONCLUSION**

2 For the above reasons, the government respectfully requests that this Court
3 prohibit the defendant from challenging at trial the validity of his prior deportations,
4 removals, or exclusions. Further, to promote judicial economy and conserve government
5 resources, the government respectfully requests any objections the defendant may have
6 concerning the admissibility of government documents related to the defendant's prior
7 deportations, exclusions, or removals be addressed in another pre-trial hearing.

8 Respectfully submitted this 27th day of January, 2016.

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10 JOHN S. LEONARDO
11 United States Attorney
12 District of Arizona

13 *s/Kathryn C. Furtado*
14 KATHRYN C. FURTADO
15 Assistant U. S. Attorney

16 Copy of the foregoing was served electronically or
17 by other means on this 27th day of January, 2016 to:

18 Juan Rocha, Esq.
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